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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 16th March, 2016:—

BILL NO. 73 OF 2016

A Bill further to amend the Companies Act, 2013.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 2016.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

18 of 2013.

2. In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act),—
(i) in clause (6), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Amendment of
section 2.

'Explanation.—For the purpose of this clause,—

(a) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;';

(ii) for clause (28), the following clause shall be substituted, namely:—

'(28) "Cost Accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;'

(iii) in clause (30), the following proviso shall be inserted, namely:—

"Provided that—

(a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and

(b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company,

shall not be treated as debenture;";

(iv) in clause (41), in the first proviso, after the word "subsidiary", the words "or associate company" shall be inserted;

(v) in clause (46), the following *Explanation* shall be inserted, namely:—

Explanation.—For the purposes of this clause, the expression "company" includes any body corporate;";

(vi) clause (49) shall be omitted;

(vii) in clause (51),—

(a) in sub-clause (iv), the word "and" shall be omitted;

(b) for sub-clause (v), the following sub-clauses shall be substituted, namely:—

"(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and

(vi) such other officer as may be prescribed;";

(viii) in clause (57), for the words "and securities premium account", the words ", securities premium account and debit or credit balance of profit and loss account," shall be substituted;

(ix) in clause (71), in sub-clause (a), after the word "company;", the word "and" shall be inserted;

(x) in clause (76), for sub-clause (viii), the following sub-clause shall be substituted, namely:—

"(viii) any body corporate which is—

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary;

or

(C) an investing company or the venturer of a company;";

(xi) in clause (85),—

(a) in sub-clause (i), for the words "five crore rupees", the words "ten crore rupees" shall be substituted;

(b) in sub-clause (ii),—

(A) for the words "as per its last profit and loss account", the words "as per profit and loss account for the immediately preceding financial year" shall be substituted;

(B) for the words "twenty crore rupees", the words "one hundred crore rupees" shall be substituted;

(xii) in clause (87),—

(a) in sub-clause (ii), for the words "total share capital", the words "total voting power" shall be substituted;

(b) the proviso shall be omitted;

(c) in the *Explanation*, item (d) shall be omitted;

(xiii) for clause (91), the following clause shall be substituted, namely:—

'(91) "turnover" means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;'

3. After section 3 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 3A.

"3A.If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor."

Members severally liable in certain cases.

4. In section 4 of the principal Act,—

Amendment of section 4.

(i) in sub-section (1), for clause (c), the following clause shall be substituted, namely:—

"(c) that the company may engage in any lawful act or activity or business, or any act or activity or business to pursue any specific object or objects, as per the law for the time being in force:

Provided that in case a company proposes to pursue any specific object or objects or restrict its objects, the Memorandum shall state the said object or objects for which the company is incorporated and any matter considered necessary in furtherance thereof and in such case the company shall not pursue any act or activity or business, other than specific objects stated in the Memorandum;"

(ii) in sub-section (5), in clause (i), for the words "sixty days from the date of the application", the words "twenty days from the date of approval or such other period as may be prescribed" shall be substituted;

(iii) after sub-section (6), the following sub-sections shall be inserted, namely:—

"(6A) A company may adopt the model memorandum applicable to such a company.

(6B) In case of any company, which is registered after the commencement of the Companies (Amendment) Act, 2016, in so far as the registered memorandum of such company does not exclude or modify the contents in the model memorandum applicable to such company, those contents shall, so far as applicable, be the contents of the Memorandum of that company in the same manner and to the extent as if that was contents of the duly registered memorandum of the company."

5. In section 7 of the principal Act, in sub-section (1), in item (c), for the words "an affidavit", the words "a declaration" shall be substituted.

Amendment of section 7.

Amendment of
section 12.

6. In section 12 of the principal Act,—

(i) in sub-section (1), for the words "on and from the fifteenth day of its incorporation", the words "within thirty days of its incorporation" shall be substituted;

(ii) in sub-section (4), for the words "within fifteen days", the words "within thirty days" shall be substituted.

Amendment of
section 21.

7. In section 21 of the principal Act, for the words "an officer of the company", the words "an officer or employee of the company" shall be substituted.

Amendment of
section 26.

8. In section 26 of the principal Act, in sub-section (1),—

(i) after the words "signed and shall", the following shall be inserted, namely:—

"state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:

Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.";

(ii) the clauses (a) and (b) shall be omitted.

Amendment of
section 35.

9. In section 35 of the principal Act, in sub-section (2), after clause (b), the following clause shall be inserted, namely:—

"(c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.".

Substitution of
section 42.

10. For section 42 of the principal Act, the following section shall be substituted, namely:—

Issue of shares
on private
placement
basis.

'42. (1) A company may, subject to the provisions of this section, make a private placement of securities.

(2) A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed fifty or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of sub-section (1) of section 62], in a financial year subject to such conditions as may be prescribed.

(3) A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed:

Provided that the private placement offer and application shall not carry any right of renunciation.

Explanation I.—"private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

15 of 1992.

15 of 1992.

Explanation II.—"qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992.

Explanation III.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

(4) Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person alongwith subscription money paid either by cheque or demand draft or other banking channel and not by cash:

Provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8).

(5) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company:

Provided that, subject to the maximum number of identified persons under sub-section (2), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day:

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the company is unable to allot securities.

(7) No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

(8) A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(9) If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

(10) Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be

liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

(11) Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of the sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable's'.

42 of 1956.
15 of 1992.

Amendment of
section 47.

11. In section 47, in sub-section (1), for the words, figures and brackets "provisions of section 43 and sub-section (2) of section 50", the words, figures and brackets "provisions of section 43, sub-section (2) of section 50 and sub-section (1) of section 188" shall be substituted.

Amendment of
section 53.

12. In section 53 of the principal Act,—

(i) in sub-section (2), for the words "discounted price", the word "discount" shall be substituted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Notwithstanding anything contained in sub-sections (1) and (2), a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949."

2 of 1934
10 of 1949.

Amendment
of section 54.

13. In section 54, in sub-section (1), clause (c) shall be omitted.

Amendment of
section 62.

14. In section 62 of the principal Act,—

(i) in sub-section (1), in clause (c), for the words "of a registered valuer subject to such conditions as may be prescribed", the words and figures "of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed" shall be substituted;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders at least three days before the opening of the issue."

Amendment of
section 73.

15. In section 73 of the principal Act, in sub-section (2),—

(i) for clause (c), the following clause shall be substituted, namely:—

"(c) depositing, on or before the Thirtieth day of April each year, such sum which shall not be less than twenty per cent. of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;"

(ii) clause (d) shall be omitted;

(iii) in clause (e), for the words "such deposits;", the following shall be substituted, namely:—

"such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default;"

Amendment of
section 74.

16. In section 74, in sub-section (1), for clause (b), the following clause shall be substituted, namely:—

"(b) repay within three years from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier:

Provided that renewal of any such deposits shall be done in accordance with the provisions of Chapter V and the rules made thereunder."

17. In section 76A of the principal Act, in clause (a), for the words "one crore rupees", the words "one crore rupees or twice the amount of deposit accepted by the company, whichever is lower" shall be substituted. Amendment of section 76A.

18. In section 77 of the principal Act, in sub-section (I), after the third proviso, the following proviso shall be inserted, namely:— Amendment of section 77.

"Provided also that this section shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India."

19. In section 78 of the principal Act, for the words and figures "register the charge within the period specified in section 77", the words, brackets and figures "register the charge within the period of thirty days referred to in sub-section (I) of section 77" shall be substituted. Amendment of section 78.

20. In section 82 of the principal Act, in sub-section (I),— Amendment of section 82.

(i) the words, brackets and figures "and the provisions of sub-section (I) of section 77 shall, as far as may be, apply to an intimation given under this section" shall be omitted;

(ii) the following proviso shall be inserted, namely:—

"Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed."

21. In section 89 of the principal Act, after sub-section (9), the following sub-section shall be inserted, namely:— Amendment of section 89.

"(10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—

(i) exercise or cause to be exercised any or all of the rights attached to such share; or

(ii) receive or participate in any dividend or other distribution in respect of such share."

22. For section 90 of the principal Act, the following section shall be substituted, namely:— Substitution of section 90.

'90. (1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed: Register of significant beneficial owners in a company.

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

(2) Every company shall maintain a register of the interest declared by individuals under sub-section (1) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.

(3) The register maintained under sub-section (2) shall be open to inspection by any member of the company on payment of such fees as may be prescribed.

(4) Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

(5) A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—

(a) to be a significant beneficial owner of the company;

(b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

(c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued,

and who is not registered as a significant beneficial owner with the company as required under this section.

(6) The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.

(7) The company shall,—

(a) where that person fails to give the company the information required by the notice within the time specified therein; or

(b) where the information given is not satisfactory,

apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.

(8) On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed.

(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8).

(10) If any person fails to make a declaration as required under sub-section (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4), fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(12) If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.'.

- 23.** In section 92 of the principal Act,—
- Amendment of section 92.
- (i) in sub-section (1),—
- (a) clause (c) shall be omitted;
- (b) in clause (j), the words "indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them" shall be omitted;
- (c) after the proviso, the following proviso shall be inserted, namely:—
- "Provided further that the Central Government may prescribe abridged form of annual return for One Person Company and small company.";
- (ii) for sub-section (3), the following sub-section shall be substituted, namely:—
- "(3) Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report."
- 24.** Section 93 of the principal Act shall be omitted.
- Omission of section 93.
- 25.** In section 94 of the principal Act,—
- Amendment of section 94.
- (i) in sub-section (1), in the first proviso, the words "and the Registrar has been given a copy of the proposed special resolution in advance" shall be omitted;
- (ii) in sub-section (3), the following proviso shall be inserted, namely:—
- "Provided that such particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (2) or for taking extracts or copies under this sub-section."
- 26.** In section 96 of the principal Act, in sub-section (2), in the proviso, for the words "Provided that", the following shall be substituted, namely:—
- Amendment of section 96.
- "Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance:
- Provided further that".
- 27.** In section 100 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—
- Amendment of section 100.
- "Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India."
- 28.** In section 101 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted namely:—
- Amendment of section 101.
- "Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto—
- (i) in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and
- (ii) in the case of any other general meeting, by members of the company—
- (a) holding, if the company has a share capital, not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
- (b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting:

Provided further that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter."

Amendment of
section 110.

29. In section 110 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

"Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section."

Amendment of
section 117.

30. In section 117 of the principal Act,—

(i) in sub-section (2),—

(a) for the words "not be less than five lakh rupees", the words "not be less than one lakh rupees" shall be substituted;

(b) for the words "one lakh rupees", the words "fifty thousand rupees" shall be substituted;

(ii) in sub-section (3),—

(a) clause (e) shall be omitted;

(b) in clause (g), in the proviso, the word "and" shall be omitted and the following proviso shall be inserted, namely:—

"Provided further that nothing contained in this clause shall apply to a banking company in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business; and".

Amendment
of section 123.

31. In section 123 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend:

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during immediately preceding three financial years."

Amendment
of section
129.

32. In section 129 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."

33. In section 130 of the principal Act,—Amendment of
section 130.

(i) in sub-section (1), in the proviso,—

(a) after the words "regulatory body or authorities concerned", the words "or any other person concerned" shall be inserted;

(b) after the words "the body or authority concerned", the words "or the other person concerned" shall be inserted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year:

Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period."

34. In section 132 of the principal Act, in sub-section (4), in clause (c), in sub-clause (A), in item (II), for the words "ten lakh rupees", the words "five lakh rupees" shall be substituted.Amendment of
section 132.**35. In section 134 of the principal Act,—**Amendment of
section 134.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.";

(b) in sub-section (3),—

(i) for clause (a), the following clause shall be substituted, namely:—

"(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;"

(ii) in clause (p), for the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" shall be substituted;

(iii) after clause (q), the following provisos shall be inserted, namely:—

"Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report:

Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available.";

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

"(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company."

Amendment of
section 135.

36. In section 135 of the principal Act,—

(i) in sub-section (1),—

(a) for the words "any financial year", the words "the immediately preceding financial year" shall be substituted;

(b) the following proviso shall be inserted, namely:—

"Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.";

(ii) in sub-section (3), in clause (a), for the words and figures "as specified in Schedule VII", the words and figures "in areas or subject, specified in Schedule VII" shall be substituted;

(iii) in sub-section (5), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

'Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.'.

Amendment
of section 136.

37. In section 136 of the principal Act,—

(i) in sub-section (1),—

(a) the words and figures "Without prejudice to the provisions of section 101," shall be omitted;

(b) in the first proviso, for the words "Provided that", the following shall be substituted, namely:—

"Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by ninety-five per cent. of the members entitled to vote at the meeting:

Provided further that";

(c) in the second proviso, for the words "Provided further", the words, "Provided also" shall be substituted;

(d) for the fourth proviso, the following provisos shall be substituted, namely:—

'Provided also that every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any:

Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary")—

(a) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company;

(b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.';

(ii) in sub-section (2), the following proviso shall be inserted, namely:—

"Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it."

38. In section 137 of the principal Act, in sub-section (1), after the fourth proviso, the following proviso shall be inserted, namely:— Amendment of section 137.

'Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian listed company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.'

39. In section 139 of the principal Act, in sub-section (1), the first proviso shall be omitted. Amendment of section 139.

40. In section 140 of the principal Act, in sub-section (3), for the words "fifty thousand rupees", the words "fifty thousand rupees or the remuneration of the auditor, whichever is less," shall be substituted. Amendment of section 140.

41. In section 141 of the principal Act, in sub-section (3),— Amendment of section 141.

(i) in clause (d), the following *Explanation* shall be inserted, namely:—

'*Explanation.*—For the purposes of this clause, the term "relative" means the spouse of a person; and includes a parent, sibling or child of such person or of the spouse, financially dependent on such person, or who consults such person in taking decisions in relation to his investments;'

(ii) for clause (i), the following clause shall be substituted, namely:—

'(i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.

Explanation.—For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the *Explanation* to section 144.'

42. In section 143 of the principal Act, — Amendment of section 143.

(i) in sub-section (1), in the proviso, for the words "its subsidiaries", at both the places, the words "its subsidiaries and associate companies" shall be substituted;

(ii) in sub-section (3), in clause (i), for the words "internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted;

(iii) in sub-section (14), in clause (a), for the words "cost accountant in practice", the words "cost accountant" shall be substituted.

43. In section 147 of the principal Act,— Amendment of section 147.

(i) in sub-section (2),—

(a) after the words "five lakh rupees", the words "or four times the remuneration of the auditor, whichever is less" shall be inserted;

(b) in the proviso, for the words "and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees", the words "and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less" shall be substituted;

(ii) in sub-section (3), in clause (ii), for the words "or to any other persons", the words "or to members or creditors of the company" shall be substituted;

(iii) in sub-section (5), the following proviso shall be inserted, namely:—

"Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable."

Amendment of
section 148.

44. In section 148 of the principal Act,—

(i) in sub-section (3),—

(a) for the words "Cost Accountant in practice", the words "cost accountant" shall be substituted;

(b) in the *Explanation*, for the words "Institute of Cost and Works Accountants of India", the words "Institute of Cost Accountants of India" shall be substituted;

(ii) in sub-section (5), in the proviso, for the words "cost accountant in practice", the words "cost accountant" shall be substituted.

Amendment of
section 149.

45. In section 149 of the principal Act,—

(i) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year:

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.";

(ii) in sub-section (6),—

(a) in clause (c), for the words "pecuniary relationship", the words "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed," shall be substituted;

(b) for clause (d), the following clause shall be substituted, namely:—

"(d) none of whose relatives—

(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or

(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);"

(c) in clause (e), in sub-clause (i), the following proviso shall be inserted, namely:—

"Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years."

46. In section 152 of the principal Act,—

Amendment of section 152.

(a) in sub-section (3), after the word and figures "section 154", the words and figures "or any other number as may be prescribed under section 153" shall be inserted;

(b) in sub-section (4), after the word "Number", the words and figures "or such other number as may be prescribed under section 153" shall be inserted.

47. In section 153 of the principal Act, the following proviso shall be inserted, namely:—

Amendment of section 153.

"Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed."

48. In section 160 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

Amendment of section 160.

"Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178."

49. In section 161 of the principal Act,—

Amendment of section 161.

(i) in sub-section (2), after the words "alternate directorship for any other director in the company", the words "or holding directorship in the same company" shall be inserted;

(ii) in sub-section (4),—

(a) the words "In the case of a public company," shall be omitted;

(b) after the words "meeting of the Board", the words "which shall be subsequently approved by members in the immediate next general meeting" shall be inserted.

50. In section 164 of the principal Act,—

Amendment of section 164.

(i) in sub-section (2), the following proviso shall be inserted, namely:—

"Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.";

(ii) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:—

"Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."

Amendment of
section 165.

51. In section 165 of the principal Act, in sub-section (1), the *Explanation* shall be renumbered as *Explanation I* and after *Explanation I* as so numbered, the following *Explanation* shall be inserted, namely:—

"*Explanation II.*—For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included."

Amendment of
section 167.

52. In section 167 of the principal Act, in sub-section (1),—

(i) in clause (a), the following proviso shall be inserted, namely:—

"Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.";

(ii) in clause (f), for the proviso the following proviso shall be substituted, namely,—

"Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)—

(i) for thirty days from the date of conviction or order of disqualification;

(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or

(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."

Amendment of
section 168.

53. In section 168 of the principal Act, in sub-section (1), in the proviso, for the words, "director shall also forward", the words, "director may also forward" shall be substituted.

Amendment of
section 173.

54. In section 173 of the principal Act, in sub-section (2), after the first proviso, the following proviso shall be inserted, namely:—

"Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso."

Amendment of
section 177.

55. In section 177 of the principal Act,—

(i) in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted;

(ii) in sub-section (4), in clause (iv), after the proviso, the following provisos shall be inserted, namely:—

"Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:

Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:

Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company."

56. In section 178 of the principal Act,—

Amendment of
section 178.

(i) in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted;

(ii) in sub-section (2), for the words "shall carry out evaluation of every director's performance", the words "shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance" shall be substituted;

(iii) in sub-section (4), in clause (c), for the proviso, the following proviso shall be substituted, namely:—

"Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.";

(iv) in sub-section (8), in the proviso, for the words "non-consideration of resolution of any grievance", the words "inability to resolve or consider any grievance" shall be substituted.

57. In section 180 of the principal Act, in sub-section (1), in clause (c), for the words "paid-up share capital and free reserves", the words "paid-up share capital, free reserves and securities premium" shall be substituted.

Amendment of
section 180.

58. In section 184 of the principal Act,—

Amendment of
section 184.

(i) in sub-section (4), the words "shall not be less than fifty thousand rupees but which" shall be omitted;

(ii) in sub-section (5), for clause (b), the following clause shall be substituted, namely:—

"(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate."

59. For section 185 of the principal Act, the following section shall be substituted, namely:—

Substitution of
section 185.

'185. (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—

Loans to
directors, etc.

(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or

(b) any firm in which any such director or relative is a partner.

(2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—

(a) a special resolution is passed by the company in general meeting:

Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and

(b) the loans are utilised by the borrowing company for its principal business activities.

Explanation.—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—

(a) any private company of which any such director is a director or member;

(b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

(3) Nothing contained in sub-sections (1) and (2) shall apply to—

(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan; or

(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.

(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.'

Amendment of
section 186.

60. In section 186 of the principal Act,—

(i) sub- section (1) shall be omitted;

(ii) in sub-section (2), the following *Explanation* shall be inserted, namely:—

'*Explanation.*—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.';

(iii) for sub-section (3), the following sub-section shall be substituted, namely:—

'(3) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting:

Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply:

Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4).”.

(iv) for sub-section (II), the following sub-section shall be substituted, namely:—

“(II) Nothing contained in this section shall apply—

(a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities;

(b) to any investment—

(i) made by an investment company;

(ii) made in shares allotted in pursuance of clause (a) of sub-section (I) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate;

(iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.”;

(v) in the *Explanation*, in clause (a), after the words “other securities” the following shall be inserted, namely:—

“and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income.”.

61. In section 188 of the principal Act,—

Amendment of section 188.

(i) in sub-section (I), after second proviso, the following proviso shall be inserted, namely:—

“Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties.”;

(ii) in sub-section (3), for the words “shall be voidable at the option of the Board”, the words “shall be voidable at the option of the Board or, as the case may be, of the shareholders” shall be substituted.

62. Section 194 of the principal Act shall be omitted.

Omission of section 194.

63. Section 195 of the principal Act shall be omitted.

Omission of section 195.

64. In section 196, in sub-section (4), for the words “specified in that Schedule”, the words “specified in Part I of that Schedule” shall be substituted.

Amendment of section 196.

65. In section 197 of the principal Act,—

Amendment of section 197.

(a) in sub-section (I),—

(i) in the first proviso, the words “with the approval of the Central Government,” shall be omitted;

(ii) in the second proviso, after the words "general meeting," the words "by a special resolution," shall be inserted;

(iii) after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that, where any term loan of any bank or public financial institution is subsisting or the company has defaulted in payment of dues to non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.";

(b) in sub-section (3), the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted;

(c) for sub-section (9), the following sub-section shall be substituted, namely:—

"(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years of such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.";

(d) in sub-section (10),—

(i) for the words "permitted by the Central Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted;

(ii) the following proviso shall be inserted, namely:—

"Provided that where any term loan of any bank or public financial institution is subsisting or the company has defaulted in payment of dues to non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.";

(e) in sub-section (11), the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted;

(f) after sub-section (15), the following sub-sections shall be inserted, namely:—

"(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.

(17) On and from the commencement of the Companies (Amendment) Act, 2016, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended."

66. In section 198 of the principal Act,—

(i) in sub-section (3), in clause (a), after the words "sold by the company", the words "unless the company is an investment company as referred to in the *Explanation* to section 186" shall be inserted;

(ii) in sub-section (4), in clause (1), the words "which begins at or after the commencement of this Act" shall be omitted.

- 67.** In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted. Amendment of section 200.
- 68.** In section 201 of the principal Act,— Amendment of section 201.
- (a) in sub-section (1), for the words "this Chapter", the word and figures "section 196" shall be substituted;
- (b) in sub-section (2), in clause (a), for the words "any of the sections aforesaid", the word and figures "section 196" shall be substituted.
- 69.** In section 216 of the principal Act, in sub-section (1),— Amendment of section 216.
- (i) in clause (b), for the word "company", the words "company; or" shall be substituted;
- (ii) after clause (b), the following clause shall be inserted, namely:—
- "(c) who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company."
- 70.** In section 223 of the principal Act, in sub-section (3), after the words "may be obtained", the words "by members, creditors or any other person whose interest is likely to be affected" shall be inserted. Amendment of section 223.
- 71.** In section 236 of the principal Act, in sub-sections (4), (5) and (6), for the words, "transferor company", wherever they occur, the words "company whose shares are being transferred" shall be substituted. Amendment of section 236.
- 72.** In section 247 of the principal Act, in sub-section (2), in clause (d), for the words "during or after the valuation of assets", the words "during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him" shall be substituted. Amendment of section 247.
- 73.** In section 366 of the principal Act, in sub-section (2),— Amendment of section 366.
- (i) for the words "seven or more members", the words "two or more members" shall be substituted;
- (ii) in the proviso, after clause (vi), the following clause shall be inserted, namely:—
- "(vii) a company with less than seven members shall register as a private company."
- 74.** Section 379 of the principal Act shall be renumbered as sub-section (2) thereof and before sub-section (2) as so renumbered, the following sub-section shall be inserted, namely:— Amendment of section 379.
- "(1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies:
- Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such order shall, as soon as may be after it is made, be laid before both Houses of Parliament."
- 75.** In section 384 of the principal Act, in sub-section (2), after the word and figures "section 92", the words and figures "and section 135" shall be inserted. Amendment of section 384.
- 76.** In section 403 of the principal Act,— Amendment of section 403.
- (i) in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:—
- "Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 89, 92, 117, 121, 137 or 157 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, it may be submitted, filed, registered or recorded, as the case may be, within a period of two hundred and

seventy days from the expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed:

Provided further that where the document, fact or information, is not submitted, filed, registered or recorded, as the case may be,—

(a) in case of document, fact or information referred to in section 89, 92, 117, 121, 137 or 157, within the period of two hundred and seventy days as provided in the first proviso; or

(b) in any other case within the period in the relevant section,

it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of such higher additional fee or additional fee, as may be prescribed:

Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information under section 89, 92, 117, 121, 137 or 157, the provisions of the first and second provisos shall not apply, until the document, fact or information is submitted, filed, registered or recorded, as the case may be, with additional fee, without prejudice to any legal action or liability under this Act.";

(ii) in sub-section (2), for the words "first proviso to that sub-section", the words "relevant section" shall be substituted.

Substitution of section 406.

77. For section 406 of the principal Act, the following section shall be substituted, namely:—

Provision relating to *Nidhis* and its application, etc.

'406. (1) In this section, "*Nidhi*" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a *Nidhi* or Mutual Benefit Society, as the case may be.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to any *Nidhi* or Mutual Benefit Society; or

(b) shall apply to any *Nidhi* or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(4) In reckoning any such period of thirty days as is referred to in sub-section (3), no account shall be taken of any period during which the House referred to in sub-section (3) is prorogued or adjourned for more than four consecutive days.

(5) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.'

Amendment of section 409.

78. In section 409 of the principal Act, in sub-section (3),—

(i) in clause (a), for the words "out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service", the words "and has been holding the rank of Secretary or Additional Secretary to the Government of India" shall be substituted;

(ii) for clause (e) the following clause shall be substituted namely:—

"(e) is a person of proven ability, integrity and standing having special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."

<p>79. In section 411 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—</p> <p>"(3) A technical member shall be a person of proven ability, integrity and standing having special knowledge and professional experience of not less than twenty-five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."</p>	Amendment of section 411.
<p>80. In section 412 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—</p> <p>"(2) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of—</p> <p>(a) Chief Justice of India or his nominee - Chairperson;</p> <p>(b) a senior Judge of the Supreme Court or Chief Justice of High Court - Member;</p> <p>(c) Secretary in the Ministry of Corporate Affairs - Member; and</p> <p>(d) Secretary in the Ministry of Law and Justice - Member.</p> <p>(2A) Where in a meeting of the Selection Committee, there is equality of votes on any matter, the Chairperson shall have a casting vote."</p>	Amendment of section 412.
<p>81. For section 435 of the principal Act, the following shall be substituted, namely:—</p> <p>"435.(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.</p> <p>(2) A Special Court shall consist of—</p> <p>(a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and</p> <p>(b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences,</p> <p>who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working."</p>	Amendment of section 435.
<p>"435.(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.</p>	Establishment of Special Courts.
<p>82. In section 438 of the principal Act, for the words "deemed to be a Court of Session", the words "deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be," shall be substituted.</p>	Amendment of section 438.
<p>83. In section 439 of the principal Act, in sub-section (2), after the words "a shareholder", the words "or a member" shall be inserted.</p>	Amendment of section 439.
<p>84. In section 440 of the principal Act, for the words "Court of Session", at both the places, the words "Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be" shall be substituted.</p>	Amendment of section 440.
<p>85. In section 441 of the principal Act, in sub-section (1), for the words "with fine only", the words "not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine" shall be substituted.</p>	Amendment of section 441.
<p>86. After section 446 of the principal Act, the following sections shall be inserted, namely:—</p> <p>"446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:—</p> <p>(a) size of the company;</p>	Insertion of new section 446A.
<p>"446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:—</p>	Factors for determining level of punishment.

- (b) nature of business carried on by the company;
- (c) injury to public interest;
- (d) nature of the default; and
- (e) repetition of the default.

Lesser
penalties for
One Person
Companies or
small
companies.

446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, clause (c) of sub-section (2) of section 117, sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections."

Amendment of
section 447.

87. In section 447 of the principal Act,—

(i) after the words "guilty of fraud", the words "involving an amount of at least ten lakh rupees or one percent. of the turnover of the company, whichever is lower" shall be inserted;

(ii) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both."

STATEMENT OF OBJECTS AND REASONS

The Companies Act, 2013 (the Act) was enacted to consolidate and amend the Laws relating to companies. Out of 470 sections of the Act, 284 sections have been brought into force so far. The process for establishment of the National Company Law Tribunal and National Company Law Appellate Tribunal is at its final stage. After the constitution of these Tribunals, most of the remaining 186 sections of the Act shall also be brought into force.

2. The Act introduced significant changes related to disclosures to stakeholders, accountability of directors, auditors and key managerial personnel, investor protection and corporate governance. However, Government received number of representations from industry Chambers, Professional Institutes, legal experts and Ministries/Departments regarding difficulties faced in compliance of certain provisions. Amendments of the Act were carried out through the Companies (Amendment) Act, 2015 to address the immediate difficulties arising out of the initial experience of the working of the Act, and to facilitate "ease of doing business". During the consideration of the Companies (Amendment) Bill, 2015 in the Rajya Sabha, views were expressed that more amendments would be required. A Companies Law Committee (the Committee) was, therefore, constituted consisting of representatives from the industry, professional institutes of chartered accountants, cost accountants and company secretaries, and a former High Court Judge under the chairmanship of Secretary, Ministry of Corporate Affairs, to examine the need for further amendments.

3. The Committee had invited suggestions from all stakeholders and thereafter held broad based consultations on the suggestions received. The Committee submitted its report to the Government on the 1st February, 2016 which was put in public domain for comments. Based on the report and comments received from the stakeholders and Ministries/Departments, it has been decided to amend the Companies Act, 2013.

4. The proposed changes are broadly aimed at addressing difficulties in implementation owing to stringency of compliance requirements; facilitating ease of doing business in order to promote growth with employment; harmonisation with accounting standards, the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder, and the Reserve Bank of India Act, 1934 and the regulations made thereunder; rectifying omissions and inconsistencies in the Act, and carrying out amendments in the provisions relating to qualifications and selection of members of the National Company Law Tribunal and the National Company Law Appellate Tribunal in accordance with the directions of the Supreme Court.

5. The Companies (Amendment) Bill, 2016, *inter alia*, proposes the following, namely:—

(a) simplification of the private placement process by doing away with separate offer letter, by making filing of details or records of applicants to be part of return of allotment only, and reducing number of filings to Registrar;

(b) allow unrestricted object clause in the Memorandum of Association dispensing with detailed listing of objects, self-declarations to replace affidavits from subscribers to memorandum and first directors;

(c) provisions relating to forward dealing and insider trading to be omitted from the Act;

(d) requirement of approval of the Central Government for Managerial remuneration above prescribed limits to be replaced by approval through special resolution by shareholders;

(e) a company may give loans to entities in which directors are interested after passing special resolution and adhering to disclosure requirement;

- (f) remove restrictions on layers of subsidiaries and investment companies;
- (g) allow for exempting class of foreign companies from registering and compliance regime under the Act;
- (h) align prescription for companies to have Audit Committee and Nomination and Remuneration Committee with that of Independent Directors;
- (i) test of materiality to be introduced for pecuniary interest for testing independence of Independent Directors;
- (j) disclosures in the prospectus required under the Companies Act and the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder to be aligned by omitting prescriptions in the Companies Act and allowing these prescriptions to be made by the Securities and Exchange Board of India in consultation with the Central Government;
- (k) provide for maintenance of register of significant beneficial owners by a company, and filing of returns in this regard to the Registrar;
- (l) removal of requirement for annual ratification of appointment or continuance of auditor;
- (m) amend provisions relating to Corporate Social Responsibility to bring greater clarity.

6. The notes on clauses explain, in detail, the provisions of the Bill.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;

ARUN JAITLEY

The 15th March, 2016.

Notes on clauses

Clause 1 of the Bill provides for the short title and commencement. It also seeks to empower Central Government to appoint date of commencement of the proposed legislation and different dates for different provision of the proposed legislation.

Clause 2 of the Bill seeks to amend section 2 of the Companies Act, 2013 (hereinafter referred to as 'the Act') for modifying the definitions of associate company, cost accountant, debentures, financial year, holding company, key managerial personnel, net worth, related party, small company, subsidiary company and turnover, and omit the definition of interested director.

Clause 3 of the Bill seeks to introduce new section 3A to provide for liability of members when the business is carried on for more than six months with members fewer than seven in case of public companies and fewer than two in case of private companies.

Clause 4 of the Bill seeks to amend sub-section (1) of section 4 of the Act to allow companies an unrestricted object clause, to engage in any lawful act or activity for the time being in force. It also proposes to amend sub-section (5) to modify the period of validity of a name reserved. The clause also seeks to insert new sub-sections (6A) and (6B) w.r.t. model memorandum.

Clause 5 of the Bill seeks to amend sub-section (1) of section 7 of the Act to replace requirement of affidavit from first subscribers and directors with declarations from them with reference to incorporation of company.

Clause 6 of the Bill seeks to amend sub-section (1) of section 12 of the Act to provide for a company to have its registered office within thirty days from the date of incorporation. Further it also seeks to enhance the time limit provided under sub-section (4) of section 12 for registering change in registered office to thirty days.

Clause 7 of the Bill seeks to amend section 21 of the Act to allow authorisations on the signature of any employee of the company duly authorised by the Board, with respect to authentication of documents, proceedings and contracts, in addition to key managerial personnel and officers already provided in the section.

Clause 8 of the Bill seeks to amend sub-section (1) of section 26 of the Act to provide that contents of the prospectus with respect to information and reports on financial information shall be specified by SEBI in consultation with Central Government. The clause also provides for applicability of existing requirements on such matters specified by SEBI.

Clause 9 of the Bill seeks to amend section 35 of the Act to hold experts liable for statements made by them and provide a defence to the directors who relied upon such statements.

Clause 10 of the Bill seeks to substitute section 42 of the Act. The proposed provisions seek to simplify the requirements with reference to private placements such as doing away with separate offer letter, reduced number of filings, etc. This clause also seeks to modify penalty provisions for contravention of this section. It also seeks to provide for restrictions on utilisation of moneys raised through private placement unless allotment is made and return of allotment is filed with the registry.

Clause 11 of the Bill seeks to amend sub-section (1) of section 47 of the Act and seeks to provide that provisions of section 47 shall also be subject to sub-section (1) of section 188 of the Act.

Clause 12 of the Bill seeks to amend section 53 of the Act to replace the words "discounted price" with the word "discount" and also to allow companies to issue shares at discount to its creditors when debt is converted into shares in pursuance of any statutory

resolution plan or debt restructuring scheme in accordance with guidelines or directions or regulations specified by Reserve Bank of India under the Banking (Regulation) Act, 1949, Reserve Bank of India Act, 1934. Further issue of shares would continue to require approval of shareholders through a special resolution.

Clause 13 of the Bill seeks to amend section 54 of the Act to remove the restriction under clause (c) of sub-section (1) which requires company to make issue only after one year has elapsed from the date of commencement of its business.

Clause 14 of the Bill seeks to amend section 62 of the Act to provide wider modes of delivery with respect to despatch of notice of offer for rights issue and to provide for applicability of provisions of Chapter III in case of issue of securities under section 62(1)(c).

Clause 15 of the Bill seeks to amend section 73 of the Act to omit requirement relating to deposit insurance and provide that deposit repayment reserve shall not be less than twenty percent. of the amount of deposits maturing during the following financial year. This clause also seeks to provide for acceptance of deposits by companies, if the default is made good and five years have lapsed since then.

Clause 16 of the Bill seeks to amend section 74 of the Act to provide that deposits accepted under the Companies Act, 1956 shall be repaid within 3 years from the commencement of the original section 74 of the Companies Act, 2013 or on or before expiry of the period for which deposits were accepted whichever is earlier.

Clause 17 of the Bill seeks to amend section 76A of the Act to provide that minimum fine for failure in repayment of deposits and interest thereon shall be rupees one crore or twice the amount of deposit accepted, whichever is lower.

Clause 18 of the Bill seeks to amend sub-section (1) of section 77 of the Act to provide that such section shall not apply to certain charges, as may be prescribed by the Central Government in consultation with the Reserve Bank of India.

Clause 19 of the Bill seeks to amend section 78 of the Act to provide clarity that the person in whose favour the charge has been created can file the charge on the expiry of thirty days from creation of charge where a company fails to file so.

Clause 20 of the Bill seeks to amend sub-section (1) of section 82 of the Act to provide the timelines for filing of satisfaction of charge on the lines of timelines provided for registration of charge under section 77.

Clause 21 of the Bill seeks to amend section 89 of the Act to include the definition of "beneficial interest in a share".

Clause 22 of the Bill seeks to replace section 90 of the Act to provide that a declaration is to be given to the company by every individual acting alone or together or through one or more person or trust including a trust and persons resident outside India, who holds beneficial interest of not less than twenty-five per cent or other prescribed percentage in shares of a company or the right to exercise or the actual exercising of significant influence or control under clause (27) of section 2 of the Act (to be called as significant beneficial owner). Further the significant beneficial owner shall while making the declaration specify the nature of interest and other particulars in prescribed manner and time to the company. It also seeks to empower the Central Government to specify class or classes or persons who shall not be required to make the said declaration. Further company shall maintain and keep available for inspection, by any member of the company, a register of significant beneficial owners. Further company shall file a return of significant beneficial owners of the company and changes therein with the Registrar. This clause also provides that company may give notice to any person whom the company knows or believes to be a significant beneficial owner of the company or who has knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge or who has been a significant beneficial owner of the company at any time during the immediately preceding three years. Further, if the person fails to give information required by the notice, the company shall apply to the Tribunal within a period of fifteen days for an order. The Tribunal may make an order restricting the rights

attached with the shares in question. If any person fails to make a declaration, he shall be punishable with fine. Similarly, where a company fails to maintain the register or file the return, the company and every officer of the company in default shall be punishable with fine.

Clause 23 of the Bill seeks to amend section 92 of the Act to omit the requirement of sub-section (3) with respect to extract of annual return forming as part of Board's report and provide for disclosure of web address/web-link of the annual return in Board's report. It also seeks to omit requirement of clause (c) of sub-section (1) regarding disclosure of indebtedness, and modify clause (j) of that sub-section regarding disclosure of names, addresses, countries of incorporation, registration and percentage of shareholding of Foreign Institutional Investors. Further it also seeks to insert a new proviso in sub-section (1) to provide that Central Government may provide abridged form of Annual Return for one person companies and small companies.

Clause 24 of the Bill seeks to omit section 93 relating to return to be filed with respect to change in promoters' and top 10 shareholders' stake.

Clause 25 of the Bill seeks to amend section 94 of the Act to restrict inspection of certain personal information, which would be prescribed through Rules, in the register of members. It also seeks to do away with filing of special resolution in advance with Registrar of Companies for keeping of the registers and returns at a place other than the registered office of the company.

Clause 26 of the Bill seeks to amend section 96 of the Act to enable unlisted companies to convene Annual General Meeting at any place in India with the approval of all shareholders obtained in advance.

Clause 27 of the Bill seeks to amend section 100 of the Act to allow the wholly owned subsidiary of company incorporated outside India to hold its extra ordinary general meeting outside India.

Clause 28 of the Bill seeks to amend section 101 of the Act to provide that general meeting may be held at a shorter notice if in case of an Annual General Meeting consent is given by not less than ninety-five percent. of the members entitled to vote and in case of other general meetings consent is given by members holding not less than 95% of paid-up share capital.

Clause 29 of the Bill seeks to amend section 110 of the Act to provide that the company may transact an item, which is mandatorily required to be transacted through postal ballot, at a general meeting also where the facility of electronic voting is provided by the company.

Clause 30 of the Bill seeks to amend section 117 of the Act to reduce the minimum that can be imposed for non-compliance with the provisions of the section. It also seeks to provide exemption to banking companies from filing resolutions with respect to grant of loans, giving of guarantee or providing of security in respect of loans in the ordinary course of its business. The clause also seeks to omit clause (e) of sub-section (3) of the section as the requirement under the clause is already covered in clause (a).

Clause 31 of the Bill seeks to amend section 123 of the Act to provide clarity, to allow declaration of interim dividend for a financial year from the profits of the said year or from brought forward surplus in the profit and loss account. It also provides clarity that interim dividend can be declared during the period from closure of financial year till date of Annual General Meeting and in such case in addition to profits referred above, the profit generated upto quarter prior to declaration of dividend may be used.

Clause 32 of the Bill seeks to amend sub-section (3) of section 129 of the Act to provide that a company having subsidiary (ies) shall prepare Consolidated Financial Statements in the same form and manner as that of its own in accordance with applicable accounting standards. It also seeks to retain two earlier provisos.

Clause 33 of the Bill seeks to amend section 130 of the Act to provide that in addition to authorities already specified, any other person concerned shall be given notice before

passing an order for re-opening of accounts. It also seeks to provide that order for re-opening of accounts can be made upto eight years unless there is a specific direction under section 128(5) from the Central Government for longer period.

Clause 34 of the Bill seeks to amend section 132 of the Act to reduce the minimum fine under sub-section (4) in respect of professional or other misconduct from rupees ten lakhs to rupees five lakhs.

Clause 35 of the Bill seeks to amend section 134 of the Act to provide that the Chief executive officer shall sign financial statements irrespective of whether he is a director or not. It seeks to modify the disclosure requirements with respect to annual return and policies in respect of remuneration and CSR. It also seeks to empower the Central Government to prescribe abridged Board's report for small company and one person company.

Clause 36 of the Bill seeks to amend section 135 of the Act to allow composition of CSR committee with two or more directors in case the company is not required to appoint independent director under section 149. Further it also seeks to empower the Central Government to prescribe sums which shall not be included for calculating 'net profit' of a company under section 135. It also seeks to modify sub-section (3) of the section to refer to areas or subjects in Schedule VII within which CSR activities could be taken up by an eligible company.

Clause 37 of the Bill seeks to amend sub-section (1) of section 136 to provide that copies of audited financial statements and other documents can be sent at shorter notice if ninety five percent of members entitled to vote at the meeting agree for the same. It also seeks to rationalise the requirements with respect to financial statements of foreign subsidiaries of a listed company subject to conditions.

Clause 38 of the Bill seeks to amend section 137 of the Act to enable filing of unaudited financial statements of foreign subsidiaries which is not required to get its accounts audited.

Clause 39 of the Bill seeks to amend section 139 of the Act to do away with the requirements of annual ratification by members with respect to appointment of auditors.

Clause 40 of the Bill seeks to amend section 140 of the Act to reduce the penalty with respect to failure to file resignation by auditor to fifty thousand rupees or the remuneration of auditors whichever is less.

Clause 41 of the Bill seeks to amend clause (d) of sub-section (3) of section 141 of the Act to insert an explanation to clarify the meaning of relative with reference to eligibility for appointment of auditors. It also seeks to amend clause (i) of sub-section (3) for harmonisation with section 144 in respect of providing of certain non-audit services.

Clause 42 of the Bill seeks to amend sub-section (1) of section 143 of the Act to cover associate companies along with subsidiary companies with respect to right of auditors to have access to accounts and records. It also seeks to provide that auditors shall report on internal financial control systems with reference to financial statements. It also seeks to amend sub-section (14) to replace cost accountant in practice with cost accountant.

Clause 43 of the Bill seeks to amend section 147 of the Act to revise quantum of fine. It also restricts the liability of auditor for damages to the shareholders or creditors of the company instead of any other person. It also seeks that in case of criminal liability of any audit firm the concerned partners only shall be liable.

Clause 44 of the Bill seeks to amend section 148 of the Act to substitute the words "cost accountant in practice" with the words "cost accountant" and also to substitute the words 'Institute of Cost and Works Accountants of India' with the words 'Institute of Cost Accountants of India'.

Clause 45 of the Bill seeks to amend section 149 of the Act to provide for easier requirements with respect to appointment of resident director. It also seeks to specify limits with respect to pecuniary relationship of a director with respect to eligibility of a director to be appointed as an independent director. It also seeks to specify the scope of restriction on pecuniary relationship entered into by a relative.

Clause 46 seeks to amend sub-sections (3) and (4) of section 152 of the Act to provide that in addition to Director Identification Number, a director may hold any other identification number prescribed by Central Government under section 153.

Clause 47 of the Bill seeks to amend section 153 of the Act to empower Central Government to recognise any other identification number to be treated as director identification number.

Clause 48 of the Bill seeks to amend section 160 of the Act to provide that the requirement of deposit of rupees one lakh with respect to nomination of directors shall not be applicable in case of appointment of independent directors or directors nominated by nomination and remuneration committee.

Clause 49 of the Bill seeks to amend section 161 of the Act to restrict a person from being appointed as an alternate director if he is holding directorship in the same company. It also seeks to enable the filling up of causal vacancy of the director by the board in case of private company as well. It also seeks to provide for approval in the next annual general meeting held.

Clause 50 of the Bill seeks to amend section 164 of the Act to provide that the disqualification for appointment of director, with respect to non-filing of financial statements or annual return or failure to repay the deposit by a company in which he is to be appointed, shall not apply for a period of six months from the date of his appointment. It proposes to modify proviso to sub-section (3) regarding certain disqualifications to continue to apply even if appeal or petition is filed.

Clause 51 of the Bill seeks to amend section 165 of the Act to exclude directorship in dormant companies from the limit of directorships of twenty companies.

Clause 52 of the Bill seeks to amend section 167 of the Act to provide that in case a director incurs any of disqualifications under section 164 (2), he shall vacate office in companies other than the company which is in default. It also seeks to amend section 167 with respect to appeal against conviction order.

Clause 53 of the Bill seeks to amend section 168 of the Act to provide that the requirement for forwarding of copy of resignation by director to the Registrar shall be optional.

Clause 54 of the Bill seeks to amend section 173 of the Act by inserting a proviso to allow participation of directors on certain items at Board meetings through video conferencing or other audio visual means if there is quorum through physical presence of directors.

Clause 55 of the Bill seeks to amend section 177 of the Act to substitute words listed company with words listed public company. This clause also seeks to insert a proviso to provide for ratification by audit committee of transactions involving amount not exceeding one crore rupees within 3 months of transaction, consequences of non-ratification, exemption from approval of audit committee to related party transactions between holding company and its wholly owned subsidiary, other than those covered under section 188, etc.

Clause 56 of the Bill seeks to amend section 178 of the Act to substitute the words listed company with the words listed public company. It also seeks to provide that committee will specify manner for effective evaluation of performance of Board and committees and individual directors either by the Board, nomination and remuneration committee or an independent external agency and for its review. This clause also seeks to provide that company shall place the remuneration policy on its website, if any and will disclose salient features of such policy with web address in the Board's report, etc.

Clause 57 of the Bill seeks to amend section 180 of the Act to include securities premium along with paid-up share capital and free reserves for calculation of upper limits on borrowing powers of the Board.

Clause 58 of the Bill seeks to amend section 184 of the Act to omit the cap of minimum penalty with respect to failure by directors to disclose interest. It also seeks to include body corporates under the ambit of sub-section (5) in certain cases.

Clause 59 of the Bill seeks to amend section 185 of the Act to limit the prohibition on loans, advances, etc., to directors of the company or its holding company or any partner of such director or any firm in which such director or relative is a partner. It also allows a company to give loan or guarantee or provide security to any person in whom any of the director is interested subject to passing of special resolution by the company and utilisation of loans by the borrowing company for its principal business activities.

Clause 60 of the Bill seeks to amend section 186 of the Act by deleting the restrictions on layers of investment companies. It also seeks to provide for aggregation of loan and investments so far made and guarantees so far provided, for the purpose of calculating the limits of loans and investments. It also provides to exclude employees from the word “person” used in sub-section (2). Further it also seeks to provide that requirement of passing a special resolution at general meeting shall not be necessary where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company of the securities of its wholly owned subsidiary company. Further it also seeks to clarify when the company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities.

Clause 61 of the Bill seeks to amend section 188 of the Act to provide that second proviso to section 188 (1) shall not apply to a company in which ninety per cent. or more members in numbers are relatives of promoters or related parties. It also seeks to provide that non-ratification of transaction shall be voidable at the option of the Board or shareholders, as the case may be.

Clause 62 of the Bill seeks to omit section 194 of the Act relating to prohibition on forward dealings in securities of company by director or key managerial personnel.

Clause 63 of the Bill seeks to omit section 195 of the Act which provides for prohibition on insider trading of securities.

Clause 64 of the Bill seeks to amend section 196 of the Act to provide that approval of Central Government shall be required on matters in Part I of Schedule V.

Clause 65 of the Bill seeks to amend section 197 of the Act to do away with requirement of obtaining approval of Central Government and to require special resolution for payment of managerial remuneration in excess of prescribed limits. It also seeks to provide that prior approval of bank or public financial institution or non-convertible debenture holder or secured creditor shall be obtained where any term loan is subsisting, before approval of shareholders. It also requires auditor of the company in his report under section 143 to make a statement as to whether the remuneration paid by the company is in accordance with the provisions of section 197.

Clause 66 of the Bill seeks to amend section 198 of the Act to provide that requirement of not giving credit for profits on sale of shares or debentures for calculation of profit shall not apply to investment companies.

Clause 67 of the Bill seeks to amend section 200 of the Act to omit the words “Central Government”.

Clause 68 of the Bill seeks to amend section 201 of the Act as a consequential change to amendment made section 196.

Clause 69 of the Bill seeks to amend section 216 of the Act to provide that Central Government may appoint inspectors for determining true persons who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of the company.

Clause 70 of the Bill seeks to amend section 223 of the Act to provide that copy of inspectors report shall be made available only to members, creditors or any other person whose interest is likely to be affected.

Clause 71 of the Bill seeks to amend section 236 of the Act to substitute the words “transferor company” with the words “company whose shares are being transferred” for providing clarity.

Clause 72 of the Bill seeks to amend section 247 of the Act to provide that registered valuer shall not undertake valuation of any asset in which he has direct or indirect interest three years before appointment as valuer or three years after valuation of assets.

Clause 73 of the Bill seeks to amend section 366 of the Act to allow conversions into companies from partnership firms, etc., with two or more members provided that in case of less than seven members the conversion would be into a private company.

Clause 74 of the Bill seeks to amend section 379 of the Act to bring clarity with respect to applicability of provisions of the Act to foreign companies.

Clause 75 of the Bill seeks to amend section 384 of the Act to bring clarity on applicability of section 135 to foreign companies.

Clause 76 of the Bill seeks to amend section 403 of Act to bring more clarity with respect to late filings of documents under sections 89, 92, 117, 121, 137 and 157 and defaults in filings, consequences, etc.

Clause 77 of the Bill seeks to substitute section 406 of the Act regarding declaration of mutual benefit societies and *Nidhi* companies.

Clause 78 of the Bill seeks to amend section 409 of the Act to provide for eligibility for technical members with Supreme Court directions with respect to constitution of National Company Law Tribunal.

Clause 79 of the Bill seeks to amend section 411 of the Act to provide for eligibility for technical members with Supreme Court directives with respect to qualifications of Technical Member of National Company Law Appellate Tribunal.

Clause 80 of the Bill seeks to amend section 412 of the Act to align with Supreme Court directions with respect to constitution of Selection Committee.

Clause 81 of the Bill seeks to amend section 435 of the Act to include appointment of Metropolitan Magistrate or a Judicial Magistrate of the First Class by Central Government in Special Court in case of offences punishable under the Act with imprisonment of not more than two years.

Clause 82 of the Bill seeks to amend section 438 of the Act as a consequence of amendments to section 435.

Clause 83 of the Bill seeks to amend section 439 of the Act to include member along with shareholders in respect of complaint with respect to taking cognizance of offences under the Act by the Court.

Clause 84 of the Bill seeks to amend section 440 of the Act to provide that till the time a Special Court is established, the trial of offences shall be continued with Court of Session or Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class.

Clause 85 of the Bill seeks to amend section 441 of the Act to enable Tribunal to compound offences punishable with fine only or with fine or imprisonment or both.

Clause 86 of the Bill seeks to insert two new sections with respect to factors for determining the level of punishment and for lesser penalties for one person companies and small companies.

Clause 87 of the Bill seeks to amend section 447 of the Act to bring thresholds with respect to compounding provisions relating to fraud without imprisonment.

FINANCIAL MEMORANDUM

The provisions of the Companies (Amendment) Bill, 2016 will not involve any expenditure of recurring or non-recurring nature, on its enactment.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (iii) of clause 2 of the Bill confers power upon the Central Government to prescribe under clause (30) of section 2 of the Companies Act, 2013 (the Act) any other kind of instrument in consultation with Reserve Bank of India, which shall not be treated as debenture under the Act.

Sub-clause (vii) of clause 2 of the Bill proposes to empower Central Government to prescribe any other officer as "key managerial personnel" under clause (51) of section 2 of the Act.

Sub-clause (ii) of clause 4 proposes to empower Central Government to prescribe the period for reserving the name of the Company by Registrar under clause (i) of sub-section (5) of section 4 of the Act.

Clause 10, *inter alia*, proposes to empower Central Government to prescribe under section 42 of the Act—

(1) higher number for making private placement by companies and the conditions subject to which private placement can be made under sub-section (2) of section 42 of the Act.

(2) under sub-section (3) of section 42 of the Act—

(a) form and manner for issuing private placement offer and application form to identified persons; and

(b) the manner in which the names and addresses of identified persons shall be recorded by company.

(3) class of identified persons for making more than one issue of securities by way of private placement under proviso to sub-section (5) of section 42 of the Act.

(4) under sub-section (8)—

(a) the manner in which a return of allotment for private placement shall be filed with Registrar; and

(b) other relevant information of allottees to be filed with the return of allotment.

Sub-clause (i) of clause 14 proposes to empower Central Government to prescribe the conditions for compliances under clause (c) of sub-section (1) of section 62.

Clause 18 proposes to empower Central Government to prescribe in consultation with Reserve Bank of India the charges to which provisions of section 77 of the Act shall not apply.

Sub-clause (ii) of clause 20 proposes to empower Central Government to prescribe additional fee for allowing filing of intimation of payment or satisfaction of charge under the proviso to sub-section (1) of section 82 of the Act.

Clause 22, *inter alia*, proposes to empower Central Government to prescribe under section 90 of the Act—

(a) other percentage of beneficial interest in shares in sub-section (1),

(b) period within which and manner in which declaration regarding beneficial interest in shares shall be given in sub-section (1),

(c) class or classes of persons which shall not be required to make declaration under proviso to sub-section (1),

(d) other details which may be included in the register of interest declared by individual in sub-section (2),

(e) fees on payment of which the member may inspect the register under sub-section (3),

(f) other details of significant beneficial owners of the company which may be included in the return of significant beneficial owners to be filed with the Registrar and also to prescribe form and manner of such filing in sub-section (4),

(g) manner in which the company may give notice in sub-section (7),

(h) matters, on which Tribunal may make order w.r.t restrictions on shares in question under sub-section (5) of section 90 of the Act,

(i) period, other than the sixty days period as already provided in the sub-section (8) of section 90, for making orders by the Tribunal.

Sub-clause (I) of clause 23 proposes to empower Central Government to prescribe under sub-section (I) of section 92 of the Act, an abridged form of annual return for one person company and small company.

Clause 25 empowers Central Government to prescribe particulars about register, index or return which shall not be available for inspection under section 94 of the Act.

Clause 32 proposes to substitute sub-section (3) of section 129. The provisos thereto propose to empower Central Government to prescribe—

(a) form for attaching separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries by a holding company;

(b) manner of consolidation of accounts of companies.

Clause 35 proposes to insert new sub-section (3A) in section 134 to empower Central Government to prescribe abridged Board's report for small company or one person company.

Clause 36, *inter alia*, proposes to empower Central Government to prescribe sums, which shall not be included in the net profit of a company under section 135 of the Act.

Clause 45, *inter alia*, proposes to empower Central Government to prescribe,—

(i) threshold amount for treating pecuniary relationship for the purpose of determining independence of a director under sub-section (6) of section 149;

(ii) higher amount of securities or interest for holding by relatives, which shall not be construed as pecuniary relationship of Independent Directors in sub-section (6) of section 149;

(iii) the amount to specify indebtedness of relative of Independent Directors for determining eligibility of an Independent Director as provided in sub-section (6) of section 149;

(iv) amount up to which guarantee may be given or security may be provided by relative of Independent Director in connection with the indebtedness of any third person in sub-section (6) of section 149.

Clause 47 proposes to empower Central Government to prescribe under section 153 the other identification number which shall be treated as Director Identification Number for the purpose of this Act and to prescribe the manner in which requirement of section 153 shall apply.

Clause 65 proposes to empower Central Government to prescribe under sub-section (16) of section 197 other details to be given by auditors while making his report under section 143 about remuneration paid to Directors.

Clause 76 proposes to empower Central Government to prescribe additional fees or higher additional fees on payment of which certain documents (referred to in sub-clause (i) of clause 76) may be filed after expiry of period specified.

ANOOP MISHRA
Secretary General